

SUPREME COURT OF ARIZONA

JACKIE DOE,)	
)	
Petitioner-Appellee,)	Supreme Court
)	No. CV-99-0343-SA
)	
v.)	Court of Appeals
)	No. 1 CA-SA 99-0190
HONORABLE MICHAEL RYAN, JUDGE OF)	
THE ARIZONA COURT OF APPEALS,)	Maricopa County
DIVISION ONE,)	No. JD-7161
)	
Respondents,)	
)	
and)	
)	
ARIZONA DEPARTMENT OF ECONOMIC)	O R D E R
SECURITY,)	
)	
Respondent, Real Party in)	
Interest/Appellant.)	
_____)	

An order was entered in this matter on August 29, 1999, vacating the Court of Appeals' August 28 order and stating a more detailed order would follow. This is that order.

FACTS AND PROCEDURAL HISTORY

A. We take as facts the matters alleged and not controverted. Doe is a fourteen-year-old juvenile whose mother has died and whose father is in prison. She has therefore been adjudicated a dependent child and is a ward of the state.

Doe is pregnant as the result of forcible rape. Through her guardian ad litem, Doe sought an order from the juvenile court permitting her to travel to Kansas to be examined to determine whether the fetus she is carrying is viable and to obtain such medical treatment as may be appropriate under Kansas law, including a therapeutic abortion.

At the hearing in juvenile court, the state appeared through its Department of Economic Security (DES) and made no objection to the motion. The trial judge nevertheless took evidence and eventually heard from Doe as well as her treating physician, counselor, psychologist, and guardian ad litem. The trial judge also ordered that Doe be examined by an independent psychiatrist appointed by the court. It was reported that Doe understood the situation and the options available and had made a reasoned decision that she preferred to terminate the pregnancy if possible. The psychiatrist concluded that within the limits of her age, Doe was competent to make that decision. It also appeared that no Arizona doctor was willing or available to render the necessary medical treatment and that travel out of state would be necessary.

On the foregoing basis, the trial judge concluded at the initial hearing and on motions for rehearing that it was in Doe's best interest that she be permitted to travel to Kansas to be treated by Kansas doctors practicing pursuant to and under the strictures of Kansas law, provided there was no expense to and no expenditure by the state of Arizona.

Having changed its position, DES then petitioned the trial judge for reconsideration, requesting only that the judge order an examination in Arizona before travel and, if the fetus was viable, that an abortion be performed in Kansas in accordance with Arizona law. When that motion was denied, DES petitioned the Court of Appeals to enter an order staying or modifying the trial judge's ruling, in accord with DES' motion for reconsideration. On August 28, no further evidence having been presented, the Court of Appeals nevertheless stayed the trial judge's order so that, before traveling to Kansas, Doe could be examined by an Arizona physician to determine the viability of the fetus. The Court of Appeals ordered further that if the fetus was determined to be viable, an Arizona physician must be in Kansas to ensure that the Kansas doctors proceed in accordance with Arizona rather than Kansas law.

Doe then filed in this court a motion to vacate the Court of Appeals' order, a petition for special action and, alternatively, a petition for review. All parties agreed that unless Doe could travel on August 29, the Kansas procedure would be unavailable.

B. The matter was then argued and submitted to the court, which concludes as follows:

1. Doe produced evidence that travel to Kansas for examination and such medical treatment as would then be determined to be appropriate was medically necessary and in her best interests. The state offered no evidence to the contrary. The trial judge's determination that the travel and therapeutic abortion were in Doe's best interests was therefore supported by the evidence.

2. The state made no showing here or in the Court of Appeals that the trial judge's ruling was clearly erroneous or an abuse of discretion. The state's only argument concerned application of Arizona law to a Kansas procedure. As all of the parties concede, a pregnant woman has a right under federal law to travel and to obtain such medical treatment as may be appropriate and lawful in another state or country. As all parties also concede, a pregnant woman has the right under federal law to a therapeutic abortion when the pregnancy is the result of rape or necessary to prevent serious physical or mental injury. *Doe v. Bolton*, 410 U.S. 179 (1973); *see also United States v. Vuitch*, 402 U.S. 62 (1971). Existing Arizona and Kansas statutes also provide for termination of a pregnancy or abortion of a viable fetus if necessary to preserve the life or health of the mother. Neither party claimed the Arizona statutes are unconstitutional.

3. Doe's status as a ward of the state does not give the state the authority to restrict her constitutional rights, including her right to interstate travel, or to deprive her of appropriate medical treatment. Doe's status does give the state the right and obligation to determine what travel and medical treatment are appropriate and in Doe's best interests. That determination was made by the trial judge

following a hearing at which due process was provided Doe and the state. Had her parents been available and decided it was in her best interests, they surely could have taken Doe to Kansas. A ward has no fewer rights when the state is acting as a parent.

4. The Court of Appeals erred in requiring a Kansas medical procedure to be performed according to Arizona rather than Kansas law. Arizona law applies to procedures performed in Arizona and can have no extra-territorial application.

On the uncontested facts and record presented to us, the court concludes that the Court of Appeals erred in staying the trial judge's order determining that it was in Doe's best interests to travel to Kansas to obtain appropriate medical treatment under Kansas law and in requiring a procedure in Kansas to be performed in accordance with Arizona law.

IT IS ORDERED, therefore, that this court's August 29, 1999 order is affirmed, and the Court of Appeals' August 28 order is vacated.

Chief Justice Zlaket and Vice Chief Justice Jones dissent from this order and will file forthwith a statement of the grounds for dissent.

Dated this _____ day of August, 1999.

Stanley G. Feldman, Justice

Frederick J. Martone, Justice

Ruth V. McGregor, Justice